IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR
and
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION NO : 25757 of 2006

Dated: 11th December 2006.

Between:

M/s. Raghavendra Exports .. Petitioner
And

The Asst. Commercial Tax Officer,
Malkajgiri Circle, Hyderabad
and another .. Respondents

ORAL ORDER: (per JC,J)

The petitioner is a proprietary concern carrying on the business in manufacture and sale of granite, a registered dealer on the rolls of the 2nd respondent both under the Central Sales Tax Act and under the A.P. Value Added Tax Act, 2005. It appears from the affidavit that the petitioner sold polished granite slabs to M/s. Shiva Granites Marble, Surat. The invoice worth value of the goods is Rs. One lakh taxable at 12.5%. The material was being transported by a vehicle bearing No. AP 27V 3229. The vehicle was intercepted by the 1st respondent at Hyderabad and a notice in Form No. 610, dated 7.12.2006

was handed over to the driver. According to the notice, the above mentioned vehicle was carrying on 2639.54 Sft of polished granite. Respondents also opined that the value of the material was not accurately stated in the invoice. According to the respondents, the said material is to be valued at Rs.2,11,163.00 and consequently the petitioner is liable to pay a tax of Rs.26,395.00.

The 1st respondent therefore detained the goods and called upon the petitioner to pay both the tax and he also chose to levy penalty which is equal to twice the amount of the tax determined by the respondents. Hence the present writ petition with the prayer as follows :

> "For the reasons stated in the accompanying affidavit, it is prayed that the Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction declaring the action of the 1st respondent in detaining the consignment of goods worth of Rs.1,00,000/- treating and estimating it as Rs.2,11,163/- along with the vehicle bearing No. AP 27V 3229 and proposing to levy tax @ 12.5% on 2639.54 Sft. Instead of 2000 Sft. Vide detention notice, dated 7.12.2006 in Form 610 and also directing to pay penalty at two times of the alleged tax due, as arbitrary, contrary to the provisions of the APVAT Act and Rules, 2005 and consequently direct the 1st respondent to release the vehicle

along with the consignment forthwith and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case."

Learned counsel for the petitioner argued that assuming for the sake of argument that the allegations made in the notice are true, demand for penalty at the stage of the detention of the goods without there being any proceedings initiated for levy of penalty is illegal and the issue is covered by an earlier decision of this Court reported in **Sujana Enterprises v. A.C.T.O. (AP)**[1]**.**

This Court in the said judgment did hold as contended by the learned counsel for the petitioner. In the circumstances, we deem it appropriate to dispose of the writ petition directing the respondents to release the vehicle bearing No. AP 27V 3229 along with the goods to the petitioner on condition the petitioner pays the tax as indicated in the demand notice mentioned above. It is open for the respondents to initiate appropriate further proceedings in accordance with law for the levy of penalty. The writ petition is accordingly disposed of.

(J.CHELAMESWAR, J)

(D.APPA RAO,J)

11th December, 2006.

Knk

Note :

Operative portion by wire at party's costs

(b/o)

knk

[1] [2005]Vol.142 STC 598